

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHESTER DION-MORGAN JACKSON,

Defendant-Appellant.

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UNPUBLISHED

March 27, 2007

No. 263562

Wayne Circuit Court

LC No. 05-000638-01

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to a prison term of ten months to four years for the felonious assault conviction and a consecutive two-year prison term for the felony firearm conviction. He appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that trial counsel was ineffective for failing to introduce evidence of the complainant's prior convictions for manslaughter, felonious assault, and first-degree retail fraud.

To the extent that defendant claims the existing record is sufficient to establish that he was denied the effective assistance of counsel, defendant must show "that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment." *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002) (citations and internal quotation marks omitted). Defendant must show that counsel's representation "fell below an objective standard of reasonableness" and "must overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must also demonstrate that counsel's deficient performance "was so prejudicial to him that he was denied a fair trial." *Id.* This requires that he demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different . . ." *Id.*, pp 302-303 (citation and internal quotation marks omitted).

Defendant has not shown that the complainant's prior convictions for felonious assault and retail fraud were admissible. A defendant may admit evidence of the alleged victim's specific violent acts that are known to the defendant to show the defendant's state of mind at the time of the incident. *People v Harris*, 458 Mich 310; 583 NW2d 680 (1998); *People v Cooper*,

73 Mich App 660; 252 NW2d 564 (1977). Here, however, defendant has not indicated, must less established, that he was aware of the complainant's prior felonious assault conviction at the time of the charged offense. Further, the complainant's retail fraud conviction was not admissible for impeachment purposes because more than ten years had elapsed since the date of the complainant's release for that conviction. MRE 609(c).

Assuming *arguendo* that the complainant's prior conviction for manslaughter was admissible on the issue of defendant's state of mind, we are not persuaded that defendant has established prejudice resulting from counsel's failure to offer this evidence at trial. The trial court's discussion of the evidence and findings indicate that there is no reasonable probability that this evidence would have changed the court's verdict. The court focused on defendant's lack of credibility as a witness and the implausibility of his account, particularly in light of the physical evidence. Whether he was fearful of the complainant was not critical to the court's assessment of the evidence. Because it is apparent that the evidence would not have affected the court's verdict, defendant is not entitled to a new trial. Moreover, there is no need to remand for development of a factual record on this point. Cf. MCR 7.211(C)(1).

Defendant also contends that there was insufficient evidence to establish felonious assault. In his argument, defendant seems to contend that the evidence did not establish that a felonious assault "took place" because the evidence indicated that he had the right to defend himself. Defendant contends that the complainant's position at the time the shot was fired was critical because if he were on the porch and attempting to enter defendant's home, then defendant had the right to defend himself. He argues that because two witnesses said that the complainant was on the porch of defendant's home when defendant shot the shotgun, while only a police officer provided evidence indicating that the complainant was on the sidewalk, the evidence "should not be considered sufficient" to establish that he was not on the porch.

This Court reviews *de novo* a challenge to the sufficiency of the evidence in a bench trial. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

Defendant's argument fails to recognize that "[a]ll conflicts with regard to the evidence must be resolved in favor of the prosecution." *Id.* Viewed in a light most favorable to the prosecution, the evidence showed that defendant fired the shot after the confrontation with the complainant had ended and the door to the porch was closed. Regardless of the complainant's position on the sidewalk or the porch, the evidence was sufficient to prove beyond a reasonable doubt that defendant did not act in self-defense.

Affirmed.

/s/ Brian K. Zahra  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens